XIII

# REPORT

OF THE

# LEGAL REMEMBRANCERS,

## NORTH-WESTERN PROVINCES,

FOR THE YEAR 1872-73.

ALLAHABAD:

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# REPORT

OF THE

# LEGAL REMEMBRANCERS,

## NORTH-WESTERN PROVINCES,

## For the year 1872-73.

No. 1024A.

FROM

E. C. BUCK, ESQUIRE,

*Offg. Secretary, Board of Revenue,*
*North-Western Provinces,*

To

C. A. ELLIOTT, ESQUIRE,

*Secretary to Government, North-Western Provinces.*

DATED ALLAHABAD, THE 16TH SEPTEMBER, 1873.

REVENUE DEPT

*Present*
THE HON. J.F.D. INGLIS, C.S.I., and H. S. REID, ESQ

SIR,

I AM directed by the Board of Revenue to submit the Legal Remembrancers' Report for the official year 1872-73.

2. The divisional returns were received on the dates noted in the margin. In three cases, however, the statement of costs had to be returned for correction, and that for Benares was not finally received till the 7th August, owing to the discovery of repeated inaccuracies. These arose from neglect in the Commissioner's office, but measures have now been taken to ensure correct compilation of the statement in future.

| | |
|---|---|
| Jhansie, ... ... | 25th April. |
| Meerut, ... ... | 28th April. |
| Agra, ... ... | 13th May. |
| Benares, ... ... | 12th June. |
| Kumaon, ... ... | 20th June. |
| Rohilkhund, ... | 3rd July. |
| Allahabad,... ... | 5th July. |

3. The chief feature in the litigation of the year is a striking increase in the number of suits accompanied at the same time by an exceptional degree of success. The subjoined table shows the number of suits in which Government was concerned as compared with that for the four preceding years, as also the percentage decided in its favour :—

| Year. | Number of suits. | Government plaintiff. | Government defendant. | Percentage in which Government was plaintiff. | Percentage in which Government was defendant. | Percentage of successful suits on total number decided. |
|---|---|---|---|---|---|---|
| 1868-69 ... ... ... | 279 | 104 | 175 | 37 2 | 62 8 | 65 |
| 1869-70 ... ... ... | 218 | 78 | 140 | 35 7 | 64 3 | 60 |
| 1870-71 ... ... ... | 250 | 81 | 169 | 32·5 | 67 5 | 73 |
| 1871-72 ... ... ... | 232 | 83 | 149 | 35 7 | 64 3 | 71 |
| Average of 4 years, ... ... | 244 | 86 | 158 | 35·2 | 64·8 | 67 |
| 1872-73. ... ... ... | 411 | 97 | 314 | 23 6 | 76·4 | 83 |

4. Of the 411 cases for trial, 60 were pending from last year, and 351 were instituted during the year as compared with 189 instituted in 1871-72. The total average for the past four years is only 244, so that the increase is somewhat startling. An explanation of the principal causes will be found in para. 17, where the different classes of suits are commented on.

5. It is noteworthy as showing that this increase was not owing to any undue tendency to litigation on the part of the officers of Government that the proportion of cases instituted by Government itself is unusually small. The average hitherto has been 35 per cent. In 1872-73 Government was plaintiff in only 23 per cent. The percentage of success for the year under review is higher than ever attained before, as will be seen from Appendix I. It is somewhat remarkable that it is almost precisely the same for cases in which Government was plaintiff and for those in which it was defendant, being 88 for the former and 84 per cent. for the latter, so that equally good judgment was shown in instituting as well as in defending suits. The Board consider these results to be satisfactory, though as will be mentioned hereafter, the year was in some respects an abnormal one, which should be borne in mind in future comparisons.

6. Appendix II. summarizes the litigation for the whole province as regards the different stages of suits, and also the suits themselves classified under certain heads. It is not always easy to determine the precise head under which a given suit falls, and the classification, though useful as a means of indicating the principal sources of contention, is not meant to be exhaustive or absolutely correct.

7. The following table shows the number and proportion of decisions for or against Government in original suits, appeals, and miscellaneous applications for 1871-72 and 1872-73, distinguishing between those in which it was plaintiff and defendant:—

| Class. | | Government Plaintiff. | | | | Government Defendant. | | | | Total. | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | | *Number.* | | *Percentage.* | | *Number.* | | *Percentage.* | | *Number.* | | *Percentage.* | |
| | | For. | Against. | For. | Against. | For. | Against. | For. | Against. | For. | Against. | For. | Against. |
| Original Suits, | 1871-72, ... | 12 | 6 | 67 | 33 | 44 | 28 | 61 | 39 | 56 | 34 | 62 | 38 |
| | 1872-73, ... | 36 | 6 | 86 | 14 | 128 | 29 | 82 | 18 | 164 | 35 | 82 | 18 |
| Regular Appeals, | 1871-72, ... | 2 | 5 | 29 | 71 | 18 | 4 | 82 | 18 | 20 | 9 | 69 | 31 |
| | 1872-73, ... | 7 | 3 | 70 | 30 | 38 | 2 | 95 | 5 | 45 | 5 | 90 | 10 |
| Special Appeals, | 1871-72, ... | 1 | ... | 100 | ... | 3 | 1 | 75 | 25 | 4 | 1 | 80 | 20 |
| | 1872-73, ... | 2 | ... | 100 | ... | 9 | 2 | 82 | 18 | 11 | 2 | 85 | 15 |
| Miscellaneous applications. | 1871-72, ... | 37 | 3 | 92 | 8 | 5 | 3 | 62 | 38 | 42 | 6 | 87 | 13 |
| | 1872-73, ... | 18 | 4 | 82 | 18 | 5 | 3 | 63 | 37 | 23 | 7 | 77 | 23 |
| | 1871-72, ... | 52 | 14 | 79 | 21 | 70 | 36 | 66 | 34 | 122 | 50 | 71 | 29 |
| | 1872-73, ... | 63 | 13 | 83 | 17 | 180 | 36 | 84 | 16 | 243 | 49 | 83 | 17 |

8. Taking original suits first out of of 259 for trial, Government was plaintiff in 51 and defendant in 208. Of the former, 36 were decided for and 6 against Government, or 86 per cent. in its favour. Of the latter it was successful in 128 and lost 29, the percentage of success being 82. The totals for and against are 164 and 35 respectively—*i.e.*, Government won 82 per cent. and lost only 18 per cent. Out of 10 regular appeals made by Government it was successful in 7 and also in 38 out of 40 defended by it, the total percentage of success being 90. Both the special appeals made by it were decided in its favour, and the same with 9 out of the 11 which it had to defend. Lastly, it was successful in 18 out of 22 miscellaneous applications preferred by it itself and in 5 out of 8 of those defended.

9. Comparing these figures with those for last year, the improvement in the first two classes is very marked, and the degree of success attained is perhaps as high as can reasonably be expected. It is especially gratifying to find that no less than 82 per cent. of the original suits were given in favour of Government—an increase of 20 per cent. upon last year, and of 13 per cent. on the average for the four preceding years.

10. When reviewing the last report, His Honor remarked, with some dissatisfaction, that 5 out of 7 regular appeals made by Government were decided against it, and desired that the Board would "impress upon their subordinates the propriety of accepting the decision arrived at by the Court of first instance, unless there are very strong grounds for disputing the judgment." The proportion of favourable decisions this year is considerably larger, being 70 per cent. as compared with 29 per cent. last year. The Board, while fully concurring in the views expressed by His Honor, would venture to remark on this point, that in complicated cases the decision of the lower Court (*e.g.*, the Moonsiffs) is sometimes not so clear as regards the construction of the law, and the reasoning from facts on which the decision is based, as might be desired. Occasionally too, apparently conflicting decisions are given by different Courts, in which case an appeal is necessary to obtain an authoritative declaration of principle. At the same time the Board are fully alive to the fact that the decision of any competent Court should be readily acquiesced in, unless there are very special reasons to the contrary.

12. Special appeals (13) though more numerous than last year (5), are still very few. The percentage of success (85) is slightly higher than it was then (80). The Board having the benefit of the advice of the Government Advocate on the points of law involved in these, it is reasonable to expect that the great majority should be given in favour of Government. The number of miscellaneous applications has fallen from 48 to 30, and the percentage of success likewise from 87 to 77. The percentage of last year was abnormally high, and though it has been somewhat reduced, it is still not unfavourably low.

13. It should perhaps be observed that it is not strictly accurate to say there were 411 suits for trial in 1872-73. At first sight this might be taken to imply there were 411 distinct causes of action. But it must be remembered that the whole of the regular and special appeals and many of the miscellaneous applications arise from original suits previously decided—*i.e.*, the same suit may be shown in different stages in successive years, or two or three times over in the same year. The real test of increase or otherwise of litigation is the number of original suits instituted.

14. The number of cases pending at the close of the year is unusually large—*viz.*, 119 as against 60 last year, and 50 the average for the past four years. Of these 60 are original suits, 45 regular appeals, 5 special appeals, and 9 miscellaneous applications. 55 come under the head of confiscation alone.

15. The next comparative table for 1871-72 and the year under review gives the suits classified under 14 heads, and the proportion those under each head bear to the

whole number, the results being also shown separately according as the initiative was taken by or against Government:—

| Kind of Suit. | | Number of suits. | Proportion to whole. | *Decided cases in which Government was plaintiff.* | | | *Decided cases in which Government was defendant.* | | |
|---|---|---|---|---|---|---|---|---|---|
| | | | | For. | Against. | Percentage of success. | For. | Against. | Percentage of success. |
| Contract, ... | 1871-72, | 15 | 6·4 | 7 | ... | 100 | 4 | 1 | 80 |
| | 1872-73, | 26 | 6·3 | 12 | 1 | 92 | 4 | 2 | 66 |
| Exchequer, .. | 1871-72, | 17 | 7·3 | ... | ... | ... | 7 | 4 | 64 |
| | 1872-73, | 34 | 8·3 | 19 | ... | 100 | 10 | 2 | 84 |
| Confiscation, ... | 1871-72, | 32 | 18·8 | 1 | 1 | 50 | 13 | 6 | 68 |
| | 1872-73. | 147 | 35 7 | 1 | 1 | 50 | 87 | 3 | 96 |
| Crown lands, ... | 1871-72, | 16 | 7·0 | 2 | 4 | 33 | 5 | ... | 100 |
| | 1872-73, | 19 | 4·7 | 2 | ... | 100 | 8 | 4 | 66 |
| Escheats, ... | 1871-72, | 11 | 5·0 | ... | 3 | ... | 2 | 3 | 40 |
| | 1872-73, | 4 | 1·0 | ... | ... | ... | 4 | ... | 100 |
| Trespass, ... | 1871-72, | ... | ... | ... | ... | ... | ... | ... | ... |
| | 1872-73, | 7 | 1·7 | 1 | 1 | 50 | 2 | ... | 100 |
| Pre-emption, ... | 1871-72, | 2 | 1·0 | ... | ... | ... | 2 | ... | 100 |
| | 1872-73, | 2 | ·5 | 1 | ... | 100 | 1 | ... | 100 |
| To set aside... orders, | 1871-72, | 45 | 19·3 | 1 | ... | 100 | 22 | 11 | 66 |
| | 1872-73, | 45 | 10 9 | 1 | ... | 100 | 26 | 7 | 78 |
| Rents, &c., ... | 1871-72, | 12 | 5·1 | 3 | 1 | 75 | 4 | 1 | 80 |
| | 1872-73, | 21 | 5·1 | 5 | 4 | 55 | 3 | 2 | 60 |
| Ejectment, ... | 1871-72, | 8 | 3·4 | ... | ... | ... | 4 | 2 | 66 |
| | 1872-73, | 29 | 7·0 | 3 | ... | 100 | 10 | 7 | 59 |
| Mortgage, ... | 1871-72, | 6 | 2·6 | ... | 1 | ... | ... | 2 | ... |
| | 1872-73, | 12 | 2·9 | 1 | 2 | 33 | 1 | 5 | 16 |
| Compensation, | 1871-72, | 8 | 3·4 | 1 | ... | 100 | 2 | 3 | 40 |
| | 1872-73, | 28 | 6·9 | 1 | ... | 100 | 16 | 3 | 84 |
| Costs, ... | 1871-72, | 59 | 25·3 | 37 | 4 | 90 | 5 | 3 | 62 |
| | 1872-73, | 31 | 7·6 | 16 | 4 | 80 | 5 | ... | 100 |
| Wages, ... | 1871-72, | 1 | ·4 | ... | ... | ... | ... | ... | ... |
| | 1872-73, | 6 | 1·4 | ... | ... | ... | 3 | 1 | 75 |
| Total, ... | 1871-72, | 232 | 100 | 52 | 14 | 79 | 70 | 36 | 66 |
| | 1872-73, | 411 | 100 | 63 | 13 | 83 | 180 | 36 | 84 |

16. As regards the litigation undertaken by Government, Appendix II. shows that suits to recover costs are more numerous than those of any other kind. This is not perhaps so much to be wondered at if there is any truth in the saying (and undoubtedly there is), that a suitor's troubles have only begun when a decree is passed in his favour. These cases almost all come under miscellaneous applications, and are not, strictly speaking, regular suits. In 1870-71 they were 45 out of a total of 81 cases in which Government was plaintiff, in 1871-72, 47 out of a total of 83 ; and in 1872-73, only 26 out of a total of 97, so that their number has been diminishing of late years. It is doubtful, however, if there is any room for satisfaction in this, looking to the large balances shown in Appendix VI. Government was successful in 16 out of 20 decided during the year, or 80 per cent. After "Costs" come "Exchequer," "Contract," and "Rent and zemindaree dues," being 19, 18, and 14 respectively; in none of the other kinds is the number higher than 4. With regard to "Exchequer" it may be remarked, that under this head are included all suits for recovery of monies lent, debts, &c. The majority of the cases are connected wtih the Court of Wards, and not with Government itself. The term as thus applied seems somewhat a misnomer, but it has been adopted for the sake of convenience. It is remarkable that the whole of the 19 cases were given in favour of Government. "Contract" suits chiefly concern the Public Works Department; they arise most frequently when advances are made to contractors who afterwards fail to fulfil their engagements. The number has increased from 8 last year to 18 this ; of 13 decided 12 were in favour of Government, who appear to be uniformly successful in this class having won 12 out of 13 in 1870-71, and the whole number (7) in 1871-72. But unless security is given, which is not invariably the case, there is little chance of realizing the decree. There is nothing calling for special remark in the other classes, the numbers being so small as to make any comparison with former years unnecessary. They will be noticed incidentally when the litigation by Government in its different capacities is commented on.

17. Turning to cases in which Government stood on its defence, no less than 314 as compared with 149 in 1871-72, it will at once be seen that this great increase (165) is chiefly owing to the 145 suits shown under the head of "Confiscation." Last year there were only 30, and His Honor then expressed a hope that they would soon disappear altogether from the returns. The Board regret that this hope has not been realized. The claims relate for the most part to lands in the Allahabad District confiscated after the mutiny. Under Section 20, Act IX. of 1859, a suit of this kind must be brought within one year from the date of the attachment, consequently all claims are now barred by this section if not by the general law of limitation. Out of 90 cases decided 87 were given in favour of Government. It is only right to notice that the high percentage of success for the year is in some degree caused by the number of these suits, which the claimants if wisely advised would have abstained from bringing. Excluding them altogether the percentage of success for defended cases would fall from 84 to 73, and for the total of decided cases from 84 to 77. The other heads under which increase is most noticeable are "Ejectment," 26, and "Compensation," 25, as compared with 8 and 7 last year. "Costs" have fallen from 12 to 5, and the whole of these were given in favour of Government. The results for the other classes will be noticed further on.

18. The preceding remarks apply to the litigation of whatsoever nature in which Government was concerned taken as a whole. The following table shows in what capacity that litigation was undertaken, and the number of suits instituted or defended by it in each capacity:—

| Heading. | | Plaintiff. | Defendant. | Total | Percentage. Plaintiff. | Percentage. Defendant |
|---|---|---|---|---|---|---|
| Government, | 1871-72, ... | 46 | 102 | 148 | 30 | 70 |
| | 1872-73, ... | 46 | 250 | 296 | 15 | 85 |
| Municipalities, | 1871-72, ... | 3 | 14 | 17 | 18 | 82 |
| | 1872-73, ... | 5 | 19 | 24 | 20 | 80 |
| Local Funds, | 1871-72, ... | 18 | 12 | 30 | 60 | 40 |
| | 1872-73, ... | 12 | 9 | 21 | 57 | 43 |
| Court of Wards, | 1871-72, ... | 16 | 21 | 37 | 43 | 57 |
| | 1872-73, ... | 34 | 36 | 70 | 48 | 52 |
| Total, | 1871-72, ... | 83 | 149 | 232 | 35 | 65 |
| | 1872-73, ... | 97 | 314 | 411 | 24 | 76 |

The distribution is fourfold according as the case referred to the interests of Government itself, the Local Funds, Municipalities, or the Court of Wards. Hitherto municipal suits have been regarded as Government suits and shown as such. But since the close of the year under review a decision of the High Court has led to the enquiry of what is the precise legal status of municipalities, and the nature of its relations with Government. As a separate reference has already been made on this point, and the question is still under consideration, it is not necessary to discuss it further here.

19. On its own behalf Government was plaintiff in only 46 out of 296 cases, or 15 per cent. as compared with 30 per cent. last year. The increase of litigation was thrust upon it by the large number of confiscation suits noticed previously. Municipal cases have increased from 17 to 24, Municipalities being plaintiffs in 5 only; Local Funds suits have diminished from 30 to 21. In this class alone does the number of suits brought by Government exceed those brought against it. Last year the proportion of the former to the latter was 60 per cent., while this year it is 57 per cent. The explanation is probably owing to Nuzzool cases in which Government is

generally obliged to sue first to oust a wrongful occupant. Court of Wards cases show a considerable increase, *i.e.*, 70, as compared with 37 in 1871-72, and 34 in 1870-71. No less than 25 of these, however, were connected with the large estate of Sherecote only recently taken under management.

With regard to these estates it may be remarked that when taken over the affairs of their owners are often found to have been in some confusion at the time of their death, and that the officers of Government have had no control over the circumstances out of which litigation arises. Owing to the want of systematic accounts, it is not always easy to ascertain the precise rights and liabilities of the property, and in the interests of the wards concessions cannot be made too easily.

20. The next table shows the number of cases of each kind decided for or against Government in each of its capacities :—

| Heading. | Government. | | | | Municipality. | | | | Local Funds. | | | | Wards. | | | | Total. | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | 1871-72. | | 1872-73. | | 1871-72. | | 1872-73. | | 1871-72. | | 1872-73. | | 1871-72. | | 1872-73. | | 1871-72. | | 1872-73. | |
| | For. | Against. | For. | Against. | For. | Against. | For. | Against. | For. | Against. | For. | Against. | For. | Against. | For. | Against. | For. | Against. | For. | Against. |
| Contract, ... | 8 | 1 | 9 | 1 | ... | ... | ... | ... | 3 | ... | 6 | 2 | .. | ... | 1 | ... | 11 | 1 | 16 | 3 |
| Exchequer, ... | 7 | 2 | 7 | 1 | ... | ... | ... | ... | ... | 2 | 2 | ... | ... | ... | 20 | 1 | 7 | 4 | 29 | 2 |
| Confiscation, ... | 14 | 7 | 88 | 4 | ... | ... | ... | ... | ... | ... | ... | ... | ... | ... | ... | ... | 14 | 7 | 88 | 4 |
| Crown Lands, ... | 3 | 1 | 9 | 4 | ... | ... | 1 | ... | 4 | 3 | ... | ... | ... | ... | ... | ... | 7 | 4 | 10 | 4 |
| Escheats, ... | 2 | 4 | 4 | ... | 4 | 4 | ... | ... | ... | 2 | ... | ... | ... | ... | ... | ... | 2 | 6 | 4 | ... |
| To set aside orders, | 15 | 5 | 18 | 2 | ... | ... | 6 | 3 | ... | 1 | ... | 1 | 4 | 1 | 3 | 1 | 23 | 11 | 27 | 7 |
| Trespass, ... | ... | ... | ... | ... | ... | ... | 3 | 1 | ... | ... | ... | ... | ... | ... | ... | ... | ... | ... | 3 | 1 |
| Pre-emption, ... | ... | ... | ... | ... | ... | ... | ... | ... | ... | ... | ... | ... | 2 | ... | 2 | ... | 2 | ... | 2 | ... |
| Rents & zemindarec dues. | 3 | 1 | 6 | 1 | ... | ... | ... | 3 | ... | 1 | ... | ... | 4 | ... | 2 | 2 | 7 | 2 | 8 | 6 |
| Ejectment, ... | 2 | 1 | 8 | 6 | ... | ... | ... | ... | ... | ... | 2 | ... | 2 | 1 | 3 | 1 | 4 | 2 | 13 | 7 |
| Mortgage, ... | ... | 1 | 2 | 1 | ... | ... | ... | ... | ... | ... | ... | ... | ... | 2 | ... | 6 | 1 | 3 | 2 | 7 |
| Compensation, ... | 3 | 3 | 9 | 2 | ... | ... | 2 | .. | ... | ... | 1 | 1 | ... | ... | 5 | ... | ... | ... | 17 | 3 |
| Costs, ... | 27 | 6 | 18 | 4 | ... | 1 | ... | ... | 1 | ... | 1 | ... | 14 | ... | 2 | ... | 42 | 7 | 21 | 4 |
| Wages, ... | ... | ... | 2 | 1 | ... | ... | ... | ... | ... | ... | ... | ... | ... | ... | 1 | ... | ... | ... | 3 | 1 |
| Total, ... | 84 | 32 | 180 | 27 | 4 | 5 | 12 | 7 | 8 | 9 | 12 | 4 | 26 | 4 | 39 | 11 | 122 | 50 | 243 | 49 |
| Percentage, ... | 72 | 28 | 86 | 14 | 44 | 56 | 63 | 37 | 47 | 53 | 75 | 25 | 87 | 13 | 78 | 22 | 71 | 29 | 83 | 17 |

This table is a supplement to Appendix II., where the suits under each head and the results are shown together. In continuation of the remarks in para. 17 Government itself was successful in 180 out of 207 cases, or 86 per cent. Excluding confiscation cases, this would be reduced to 80 per cent. Out of 20 suits "To set aside orders" it won 18, and was least successful in "Ejectment" suits losing 6 out of 14. The litigation on account of Municipalities is small. Out of 9 suits "To set aside orders" it won 6. It is satisfactory to find that the extensive powers conferred on them by their bye-laws appear to be exercised with moderation and discretion ; three suits for rents were all lost; but for this the percentage of success would have been very high; as it is, it has risen from 44 per cent. last year to 63.

Sixteen suits were decided in which Local Funds were concerned as against 17 in 1871-72. Of these 8 come under "Contract," of which they won 6. The percentage of success has greatly improved, being now 75 per cent. Last year the Court of Wards was the most successful of all, and the results are still very satisfactory, it having won 39 out of 50 cases, or 78 per cent. The great success in "Exchequer" suits has been already noticed; 20 out of 21 were decided in its favour. As a set-off it lost all 6 "Mortgage" cases, in 2 of which it was plaintiff and in 4 defendant. The former were lost on account of no regular bond having been executed, and the proof adduced was not considered sufficiently strong by the courts to justify a decree.

21. Appendix III. gives the number of suits for disposal in each division in which Government was concerned in its several capacities. The following table shews the comparative results for the last four years :—

| Division. | 1869-70. | | | | 1870-71. | | | | 1871-72. | | | | 1872-73. | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | Number for. | Number against. | Percentage for. | Percentage against | Number for. | Number against. | Percentage for. | Percentage against. | Number for. | Number against. | Percentage for. | Percentage against. | Number for. | Number against. | Percentage for. | Percentage against. |
| Meerut, ... ... ... | 27 | 20 | 57 | 43 | 27 | 6 | 82 | 18 | 24 | 10 | 70 | 30 | 40 | 5 | 89 | 11 |
| Kumaon, ... ... ... | ... | ... | ... | ... | 1 | 2 | 33 | 67 | ... | ... | ... | ... | 1 | ... | 100 | ... |
| Rohilkhund, ... ... ... | 16 | 18 | 47 | 53 | 47 | 21 | 69 | 31 | 21 | 19 | 52 | 48 | 35 | 9 | 80 | 20 |
| Agra, ... ... ... ... | 18 | 12 | 60 | 40 | 23 | 10 | 70 | 30 | 16 | 12 | 57 | 43 | 33 | 8 | 80 | 20 |
| Jhansie, ... ... ... ... | ... | ... | ... | ... | 3 | 1 | 75 | 25 | 1 | ... | 100 | | 1 | ... | 100 | ... |
| Allahabad, ... ... ... | 12 | 3 | 80 | 20 | 12 | 7 | 63 | 37 | 20 | 7 | 74 | 26 | 103 | 14 | 88 | 12 |
| Benares, ... ... ... | 26 | 12 | 68 | 32 | 39 | 8 | 83 | 17 | 40 | 2 | 95 | 5 | 30 | 13 | 69 | 31 |
| Total, ... | 99 | 65 | 60 | 40 | 152 | 55 | 73 | 27 | 122 | 50 | 71 | 29 | 243 | 49 | 83 | 17 |

Excluding the Kumaon and Jhansie, Divisions the Benares Division, which was first in 1871-72, is last in 1872-73, while Meerut has the highest percentage of successful cases (89), closely followed by Allahabad with 88. The position of the two latter is in some degree owing to the number of "Exchequer" suits in the former, and of "Confiscation" suits in the latter. The unsuccessful Court of Wards cases in the Benares and Mirzapore Districts have contributed to lower the percentage for the division.

22. Appendix IV. shows the number of suits of each kind by divisions, and Appendix V. the way in which these suits have been decided. Details are added for districts as the Board think it may be interesting to examine the relative amount of litigation under local officers. The number of suits is greatest in the Allahabad Division, and out of 180 cases in it 173 were in the Allahabad District alone, 136 of these coming under "Confiscation." The Benares Division is next with 71, out of which 24 were in the Benares District, 22 in Mirzapore, and 13 in Ghazeepore. Then come Rohilkhund and Meerut, with 58 and 53 respectively. Agra has 46, Kumaon 2, and Jhansie 1 only. Out of 31 cases for "Costs" in the whole province, 20 were in the Benares Division. Of the 58 cases in Rohilkhund 30 were in Bijnour and 20 in Bareilly: 25 of the former were connected with the Sherecote Estate. In the Meerut Division the litigation was more equally divided over all the districts, Allygurh having the greatest number of suits (18). In the Agra Division the returns are blank for Mynpoory and Etah. In the Agra District itself there were 19 cases, in Furruckabad 11, and in Muttra and Etawah 8 each.

23. The results have been already so fully noticed that there is little to add here. The Benares District has perhaps done worst, having lost 7 out of 14, and Allahabad must rank very high having won 98 out of 110 decided cases. Boolundshuhur lost 5 out of 12, and Mirzapore 4 out of the same number. Allygurh won all its 15 cases, Bijnour 20 out of 23, Agra 14 out of 17, and Bareilly 13 out of 16. The figures for the remaining districts are too low to admit of any conclusions being drawn from them.

24. The cost of litigation during 1872-73 as compared with that for 1871-72 is given in Appendix VI. The following abstract contains the figures for the year under report :—

| Division. | Cost incurred by Government. | Awarded to Government. | Recovered. | Balance. | Balance of previous years remaining uncollected. |
|---|---|---|---|---|---|
| | Rs. a. p. | Rs. a. p. | Rs. a. p. | Rs. a. p. | Rs. a. p. |
| Meerut, ... ... ... ... | 5,506 9 9 | 2,986 3 3 | 83 12 9 | 2,902 6 6 | 1,952 12 0 |
| Kumaon, ... ... ... ... | 550 0 0 | 88 7 0 | 88 7 0 | ... | ... |
| Rohilkhund, ... ... ... | 1,018 8 3 | 738 9 9 | 190 13 3 | 547 12 6 | 2,712 4 6 |
| Agra, ... ... ... ... | 3,525 7 11 | 2,574 2 8 | 127 9 6 | 2,448 9 2 | 1,794 3 2 |
| Jhansie, ... ... ... ... | 41 8 0 | 41 8 0 | ... | 41 8 0 | ... |
| Allahabad, ... ... ... | 4,879 0 6 | 3,096 12 5 | 493 14 6 | 2,602 13 11 | 1,151 7 3 |
| Benares, ... ... ... ... | 2,506 9 6 | 1,562 3 11 | 1,262 8 5 | 299 11 6 | 1,160 0 7 |
| Total, ... | 18,027 11 11 | 11,089 15 0 | 2,247 1 5 | 8,842 13 7 | 8,770 11 6 |

25. The gross amount of costs incurred by Government was Rs. 18,027-11-11, of which Rs. 11,089-15-0 were awarded in its favour, or 61 per cent. only ; whereas the percentage of successful cases was 83. Rs. 2,247-1-5 were recovered, leaving a balance of Rs. 8,842-13-7. It will be seen that the increase in litigation as compared with last year was 77 per cent. and the increase in costs 62 per cent., or 15 per cent., less in proportion. In spite of the number of suits in the Allahabad Division, the costs incurred were highest in Meerut—*viz.*, Rs. 5,506-9-9. In Rohilkhund they were very low—*viz.*, Rs. 1,018-8-3. Presumably they may be taken to show approximately the relative value of the suits for each division.

26. The Board regret now to have to notice a feature which to some extent mars the otherwise satisfactory results of the year,—*viz.*, the small proportion of costs recovered by Government, being only 20 per cent. of the amount awarded as compared with 35 per cent. in 1871-72. The proportion realized in each division, exclusive of Jhansie and Kumaon, is given below:—

| | 1872-73. | 1871-72. |
|---|---|---|
| Benares, ... ... ... | 80 | 25 |
| Rohilkhund, ... ... ... | 25 | 74 |
| Allahabad, ... ... ... | 16 | 5 |
| Agra, ... ... ... | 5 | 21 |
| Meerut, ... ... ... | 2 | 24 |

Benares is the only division for which the figures can be said to be satisfactory—all the others fall very far below it ; and in Rohilkhund, where 74 per cent. was recovered last year, only 25 per cent. was this ; while in Meerut, which is the worst of all, the recoveries are so small as 2 per cent. The unsatisfactory nature of the results for 1871-72 was severely commented on in the orders of Government on the report for that year. The Board have again requested Commissioners to give this subject their most serious attention, and have directed them to call on the Collectors concerned to report specially why these large balances were allowed to remain, and the reasons which prevent their being realized. The explanations when received will be forwarded for the information of Government. The total outstanding balances for former years has increased from 8,637-6-3 in 1871-72 to 8,770-11-6 in 1872-73. Both recoveries and remissions are larger than last year. The proportions of the former in the several divisions, exclusive of Jhansie and Kumaon, were as follows:—

| Divisions. | 1872-73. | 1871-72. |
|---|---|---|
| 1. Benares, ... ... ... ... ... | 40 per cent. | 29 per cent. |
| 2. Rohilkhund, ... ... ... ... ... | 37 " | 22 " |
| 3. Meerut, ... ... ... ... ... | 12 " | 51 " |
| 4. Agra, ... ... ... ... ... | 7 " | 6 " |
| 5. Allahabad, ... ... ... ... ... | 1 " | 44 " |

Commissioners have been instructed to report at once for remission all sums found to be irrecoverable, and in future separate columns will be added to Appendix VI. to distinguish recoverable from irrecoverable and doubtful balances.

27. Full information has not been supplied in the present returns from which a statement can be compiled, showing the value of the property which has come under litigation during the year; but the Board will call for this in future, as perhaps affording a better index than even the number of suits itself of the extent to which the interests of Government have been affected by litigation in the courts.

28. A résumé of some of the most important cases of the year is given in the following paragraphs. There have been few if any involving important principles of law, though some are remarkable on account of the magnitude of the claims made. One cause of difficulty in selecting these cases is that those of much interest are, as a rule, appealed; and the appeal not being decided within the year, the abstract is necessarily incomplete.

Poorun Singh and others *versus* Government.

29. This was noticed in para. 20 of the report for 1870-71, and also in para. 1 of the report for last year. The appeal there mentioned as having been instituted in the High Court has since been decided in favour of Government and adversely to the appellants. The nature and history of the claim was given in the report for 1870-71, and it is not necessary to go over the same ground again. The following extract from the decision of the High Court will show their reasons for dismissing the appeal.

After reviewing the previous stages the case had gone through at considerable length, the Hon'ble Judges go on to say :—

"Poorun and the heirs of Moorlee Dhur then brought the suit, out of which this appeal arises, in which they claim a declaration of their right as zemindars, and the maintenance of their possession on the ground that a settlement was made with them in 1860 as zemindars not as farmers.

"Both the lower courts have found that the Settlement Officer and Commissioner took engagements from them as zemindars, that confirmation of their title by the Sudder Board was doubtful, and that certainly the settlement of the estate with them as zemindars had not been confirmed by Government. In special appeal it is contended by Poorun Singh and the heirs of Moorlee Dhur, that although there may have been no distinct order of Government recognizing the appellants as zemindars, the Government is bound by the acts of its officers, who had deliberately and distinctly recognized the appellants as zemindars, and for a succession of years taken revenue from them in that character.

"It must be admitted that the appellants have reason to complain of the conduct pursued towards them by the Revenue authorities. In the years 1859-60 settlement was made with them provisionally as zemindars by Captain Maclean. The acts of the Settlement Officer were confirmed by the Commissioner, and indirectly by the Sudder Board of Revenue, and the claim of Jodha was rejected; all that was required to complete their title was the sanction of the Lieutenant-Governor, a sanction which it was not in their power to solicit, but which would in all probability have been then accorded had the matter been referred at once by the Settlement Officer and the Board of Revenue. Unfortunately for the appellants, as the revision of the assessment was hastily conducted, it was deemed advisable that a final settlement should not be made for the customary term of years, but that the regular settlement should be undertaken, consequently the conference of the estate on the appellants was never formally submitted to Government. The appellants were undoubtedly treated as zemindars for a number of years, and so far as the local revenue authorities, and the Sudder Board of revenue were concerned, their title was fully acknowledged, as is evident from the orders passed in 1868. Unfortunately Colonel Lloyd took a mistaken view of the nature of the arrangement proposed by Captain Maclean, and hence the Sudder Board of Revenue in 1870 reversed the orders of the same Board passed ten years before. No formal sanction had been obtained from His Honor the Lieutenant-Governor to the settlement of the estate with the appellants, and until that sanction was given the grant Remained incomplete. The case of the Collector of Masulapatam (Moore's Indian Appeals) established that the subordinate revenue authorities cannot, by acts or admissions made beyond the scope of their authority, bind the Government, and that the zemindary rights in estates vested in the Government cannot be conferred by a Settlement Officer on persons with whom he may make settlement except subject to confirmation and it would be beyond the scope of the authority of the settlement or revenue officers to confirm it. We are therefore obliged to dismiss this appeal: should the appellants desire to obtain the opinion of the Privy Council, the case is one in which we should be disposed to grant a certificate. Looking to the hardship which the appellants suffer by the omission of the officers of Government to submit the settlement made with them for confirmation, we direct each party to bear his own costs."

It will be seen from the above remarks that the High Court were clearly of opinion the appellants had suffered substantial injustice, though not entitled to legal redress.

His Honor was accordingly pleased to direct that they should be admitted to settlement for half the village.

The Board have since been informed that Poorun Singh (who it may be mentioned is undergoing a term of five years' imprisonment for concealment of murder) is not satisfied with this concession, and intends to prosecute his claim to have the whole village settled with him as zemindar before the Privy Council.

Hafzool Rahman and others *versus* Government.

30. This case was also noticed in para. 16 of the report for last year. No copy of the judgment has yet reached the Board, but they have been informed by the Senior Government Pleader that the High Court has given a decree in favour of the plaintiffs. Full details of the case will be given in next year's report.

Gholam Ali and Akbar Ali *versus* Soobhan Ali and Government.

31. In this case the Magistrate of Benares was sued by the lessees of the bridge of-boats for the expenses incurred in keeping up the bridge after the term of their contract had expired. The circumstances which gave rise to the suit are as follows:—

The plaintiffs entered into a written agreement to maintain the bridge-of-boats at Rajghat during the year ending 31st May, 1871. From that date arrangements were made with other contractors (the co-defendants). But in the pottah and kabooliyat a provision was entered, that the bridge should be kept up by the plaintiffs till the rise of the river in June, *i.e.*, after the expiry of the lease. This was necessary, as a new contractor entering on his lease would naturally decline to construct a fresh bridge, which could only be used for a fortnight or three weeks at most, until the rise of the river in the rains. The plaintiffs accordingly kept up the bridge from 1st to the 14th of June, 1871, when the new contractors took possession, and the plaintiffs sued them to recover Rs. 7,283-5-4, the alleged expenditure incurred in keeping up the bridge during this extra period. The Court, however, was of opinion that in disposing of the claim it would be necessary to record a finding as to whether if plaintiffs were entitled to such compensation, the amount should be paid by the defendants or by Government, and it therefore ordered that the latter should be made a co-defendant in the suit. The defence for Government was that as the contractors had specially agreed to maintain the bridge till the rising of the river in June, they could not claim compensation from Government for having done so. Further, that as the bridge had been kept up for the benefit of the new contractors, compensation if payable at all would be payable by them, and in fact they were informed before taking the lease that such would be the case.

The issues fixed by the Subordinate Judge were:—

1*st*,—Whether plaintiffs maintained the bridge 14 days more after the expiry of their lease on 31st May, 1871.

2*nd*,—If so, are they entitled to compensation, and, if entitled, is such compensation payable by the new contractors or by Government or by both.

3*rd*,—What was the actual cost incurred by the plaintiffs which they are entitled to recover.

On the first two issues the decision was as follows:—

"With regard to the first point, it is clear from the pottah that plaintiff's lease expired on 31st May, 1871, and that they maintained the bridge 14 days after that date, is admitted both by Government and the other defendants.

"As regards the second point, I am of opinion that the engagement made with the plaintiffs for the construction of the bridge, and the levy of tolls, expired on 31st May,

1871; and that the stipulation made with them for maintaining the bridge till the rise of the river, and till ordered by the Magistrate to break it up, even after expiry of the term of lease, is quite a different engagement from that expired on 31st May, 1871, and plaintiffs are doubtless entitled to receive payment for any expense incurred by them on account of such separate stipulation.

"Government, indeed, admits this claim of the plaintiffs when in its defence it states that plaintiffs may have a right to claim compensation from the new contractors, and this it is for the Court to decide. Moreover, before entering on their lease, the new contractors were informed by Government that they would have to settle with the former contractors regarding the expense incurred in maintaining the bridge.

"The defence of Government that it should not be made answerable for plaintiffs' claims, however, requires the consideration of the Court. Who is the party then whom the plaintiffs are entitled to sue? It is quite clear that it was Government who stipulated, that after expiry of their lease plaintiffs should maintain the bridge till receipt of Magistrate's orders. Government therefore cannot claim exemption from any claim for compensation arising from such an engagement. The new contractors entered into no such stipulation with the former contractors, and they are not therefore personally a party to it. But considering that Government made this stipulation actually with the view of securing the public convenience, and assisting the new contractors whoever they might be, and that the latter did actually benefit by it, it is but just that the new contractors should be made a subsidiary party to the contract, and, under the general principles of contracts, they are equally answerable with the contracting party. Neither Government therefore, nor the new contractors, can be exempted from the suit."

The judgment then went on to say that the question as to whether the ultimate responsibility rested with Government or the new contractors could not be decided in the present case. The amount decreed was Rs. 1,029-8-9, with costs in proportion. The Board are not prepared to accept this decision as warranted by the facts, and think that at any rate it should have been determined whether the real liability rests with Government or the new contractors. An appeal has consequently been preferred, which is still pending in the Judge's Court.

Hearsey and Hearsey, *versus* Secretary of State.

32. This is a most extraordinary claim relating to the Bilheree Estate in the Terai, all the rights and interests in which were lately purchased by Government from the present plaintiffs. To explain fully the circumstances which gave rise to the suit, it will be necessary to recapitulate briefly the history of the estate since the commencement of British rule. In 1817, Captain Hyder Hearsey purchased the Bilheree Estate at a sale for arrears of revenue. In 1820 he fell into arrears himself, and his rights in the newly-acquired property were bought by one Abu Turab Khan. Legal proceedings were subsequently instituted by Captain Hearsey to set aside this sale, and finally, after they had gone on with varying results for a considerable time, a compromise was effected, by which Captain Hearsey again became the possessor. In 1838-39 he fell into arrears a second time, and the estate was farmed to the Mukaddums or Tharoos for a period of 15 years ending in 1261 Fuslee. In 1840, revision of settlement took place, and the Settlement Officer made a settlement with the Tharoos for 20 years ending in 1267 Fuslee, assigning a malikana allowance only to Major Hearsey. In 1259 Fuslee the Commissioner of Rohilkhund cancelled this settlement with the Tharoos, and made the collections koork tehseel, which arrangement continued till October, 1869, when the estate was bought by Government. In 1854, proceedings were instituted in the Bareilly District Court to set aside the order of the Settlement Officer passed in 1840, but it was finally upheld in appeal by the Sudder Court.

On the expiry of the Settlement in 1867-68, Captain Hearsey renewed his claim to proprietary possession. A long correspondence took place between him and the revenue authorities, in the course of which the rights of all parties were thoroughly investigated.

It appeared to Government that Captain Hearsey undoubtedly was entitled to a certain interest in the property, but that to admit him to an active exercise of proprietary rights might be attended with most undesirable consequences, owing to the peculiar nature and temperament of the Tharoos who are the cultivating community. It was therefore considered advisable to purchase his rights on behalf of Government, and so terminate this long-standing dispute. Negotiations were entered into with this view, and on October 18th, 1869, the deed of sale conferring on Government the entire rights and interest possessed by Captain Hearsey in the Bilheree Estate was duly signed and executed, the purchase money being three lakhs of rupees. Besides this a further sum of Rs. 22,000 was allowed for interest during the time the negotiations were being carried on. Everything was thus apparently settled, but Captain Hearsey seems to have been advised that this sale did not preclude his making further claims on Government. In conjunction with his brother, he has now brought a suit in the Court of the Subordinate Judge of Bareilly to recover Rs. 3,04,360 principal, and Rs. 2,50,085 interest thereon, total Rs. 5,54,445—*viz.*, the profits which constitute the zemindaree rights derived from the Bilheree Estate alleged to be held in deposit in the Bareilly Treasury for 14 years—*i.e.*, from 1262 Fuslee to 1275 Fuslee, corresponding with 1854-55 to 1867-68 A.D., or the period for which the estates were held koork tehseel.

The grounds of action in the plaint are said to be that "the defendant prevented the plaintiffs from becoming aware of their right of action up to the month of January, 1868, by means of the false statements made by the defendant's servants, that the settlement of the zemindaree of Bilheree for the said period had been made with strangers, whereas the fact is that the Government cancelled the former settlement in 1259 Fuslee, and, from that time till the sale of the estate to Government, the zemindaree of Bilheree remained in the possession of the defendant's servants as koork tehseel."

On the part of Government it was urged that the estate being situate in the Terai, and not in the Bareilly District, the Bareilly Courts had no jurisdiction; that the suit was barred by limitation—its real object being to set aside the order of the Settlement Officer passed in 1840, and which, moreover, had been already finally upheld by the Sudder Court in a previous suit brought to annul it; and lastly, that the entire rights and interests of the plaintiff were sold without reserve to Government on the 18th October, 1869, when it was expressly recorded in the sale-deed that there was no other claim on the property, and that, should any be preferred hereafter, the plaintiff would be responsible. The case came on for hearing, and the question of jurisdiction was taken up first.

With regard to this point, it may be remarked that the Terai has several times been changed from the Rohilkhund to the Kumaon Division and *vice versâ*. It was only in 1871 that it was finally transferred to Kumaon.

The plaintiff's pleader contended that the Commissioner of Rohilkhund having made collections from 1852 to March, 1861, when Bilheree was in the Bareilly District, and withheld them from plaintiff, the cause of action arose within the jurisdiction of the Bareilly Court; and, further, that the Commissioner, as the representative of the Secretary of State for India, now dwells in Bareilly and personally works for gain. The Subordinate Judge, however, overruled this view. It was proved that there were no moneys belonging to the Bilheree Estate in deposit in the Bareilly Treasury, and that during part of the time, at any rate, the collections had been made by the Terai authorities, and that the Terai at present was within Kumaon jurisdiction, and all moneys belonging to the estate were in the Terai Treasury. He accordingly held that the cause of action did not accrue within his jurisdiction, and, under Section 3, Act XXIII. of 1861, returned the plaint to the plaintiffs for presentation in the proper Court, without going into the merits of the case, ordering them at the same time to pay the costs of Government. The plaintiffs have filed a special appeal in the High Court, which is still pending.

Madho Dass and Bisheshur Dass *versus* Court of Wards.

33. This was a suit brought against the Collector of Allahabad as representative of the Estate of Pertab Chund, minor, on behalf of the Court of Wards, to recover Rs. 10,000 principal, and Rs. 8,400 interest, according to a mortgage bond dated 13th November, 1865 and to establish a lien on two houses hypothecated in the said bond, and now in the possession of the defendants. The facts are as follows: Chotee Lall, possessed of property in Benares, Mirzapore, and Allahabad, on the 13th November, 1865, executed a bond for Rs. 10,000 in favour of the plaintiffs, and mortgaged two houses at Mirzapore, together with other property in Benares as security for the satisfaction of the same. On the 17th November, 1867, he, in conjunction with his brother Deen Dyal, mortgaged the same two houses in Mirzapore, together with other property in Allahabad, to Rai Manick Chund, father of the minor Pertab Chund. On the 18th February, 1868, Bisheshur Dass and Madho Dass obtained a decree in the Civil Court, Benares, against the property mortgaged to them, and on the 7th July Manick Chund obtained a similar decree in the Civil Court of Allahabad. In neither case, however, did the plaintiffs comply with the rules laid down in Section 12, Act VIII. of 1859, regarding suits for immovable property situate in different districts. Manick Chund having taken out execution of his decree, obtained possession of the houses in dispute as auction purchaser on 19th November, 1869, and on 6th Septembr, 1870, Madho Dass and Bisheshur Dass had the same houses put up for sale, and purchased the rights and interests of Chotee Lall therein. They then claimed possession as mortgagees prior to Manick Chund, and their claim being resisted, they sued in the Civil Court to enforce it. The Subordinate Judge of Mirzapore decided that both parties having failed to comply with the provisions of Section 12, Act VIII. of 1859, had lost their rights as mortgagees, and that their respective decrees could be looked upon as money decrees only, consequently Manick Chund having been the first in the field, the plaintiffs were not entitled to recover from him. This decision was upheld on appeal by the High Court. The plaintiffs then sued the minor's estate on their bond to establish their rights of hypothecation over the houses in question, alleging that the decision of the High Court was tantamount to cancelling all former proceedings, and that they consequently reverted to their original position of mortgagees. For the defence it was alleged that this claim was barred by Section 2 of Act VIII. of 1859, as it had already been heard and determined by a court of competent jurisdiction—*i.e.*, on the 10th February, 1868, when a decree was obtained by the plaintiffs, and execution taken out. Further, that the decision of the High Court in appeal could not be construed so as to make the present claim admissible. The Subordinate Judge of Mirzapore, however, held that the effect of the High Court's decision was to make the former decree no decree at all, and all subsequent proceedings null and void. He therefore concluded that the plaintiffs had still the right to sue on the mortgage deed, and gave a decree in their favour with costs. The Board do not concur in this interpretation of the High Court's judgment, and consider that it still left the decree good, though only as a money decree, and that it was legally satisfied by the sale of the property purchased by the plaintiffs, to whom the rule of "*caveat emptor*" must apply. They have, therefore, directed a special appeal to be filed in the High Court, which has not yet come on for hearing.

McCarthy *versus* Secretary of State.

34. This was perhaps the *cause célèbre* of the year, and created considerable public interest as to the result. The proceedings were exceedingly voluminous, the written statement for the plaintiffs alone covering more than 70 pages of foolscap. It is unnecessary to give here more than a very brief outline of the facts, more especially as Government is already well acquainted with the case, and the whole of the papers connected with it have been printed. The plaintiff claimed no less than Rs. 3,35,260-8-8, on account of an alleged breach of the contract entered into by him with Government for the construction of artillery barracks and hospitals in the New Cantonment at Allahabad. In February, 1865, Government invited tenders for the erection of barracks for a wing of infantry only, but before

the tenders for this work were accepted, it was resolved to extend the construction of the barracks sufficiently to meet the wants of a whole regiment of infantry, and a battery of artillery; officers' quarters were also to be provided. The tenders of three parties—Messrs. Fleming, Frizzoni, and McCarthy—were accepted, and it was understood and agreed to by all these contractors that their rates should be assimilated, and the works of the new cantonment divided equally between them. The general conditions of the contract were—(1) that the contractor should complete the whole of the work included in his contract within 36 months from date of acceptance of tender, the Executive Engineer supplying all necessary drawings and specifications for the works; (2) that no work was to be undertaken or material supplied by the contractor without written instructions to that effect; (3) that the whole of the brick-work should be completed within 30 months from date of acceptance of tender; (4) that the contractor was bound to execute 60,000 cubic feet of masonry per mensem. For a whole year, however, no work, with the exception of the construction of a well in the infantry line, was given to Mr. McCarthy, and want of plans and estimates first led to the postponement of the artillery barracks, and owing to financial difficulties subsequently the construction of the buildings was again deferred. The contract bond was not drawn up till the 27th June, 1867. The bond was to execute the work described in a certain specification, subject to all the terms and conditions of the said specification and tender under a penalty of Rs. 20,000. The specification contained no specified quantity of work, the contract being merely for execution of certain description of work at fixed rates. Mr. McCarthy contended his contract was to execute 60,000 cubic feet of masonry per mensem for 30 months, or 1,800,000 feet in all, and that he was ready and willing to complete this total quantity when the work was put a stop to by the Department on the 19th October, 1871, up to which date he had actually completed 646,137 cubic feet. The details of his claim were as follows :—

I.—For loss of profits, &c., on the above account.

II.—Damages for deterioration of materials owing to delay and subsequent stoppage of work.

III.—Under article 65 of terms and conditions he claimed 10 per cent. on the value of the difference between work which should have been done by him between May, 1860, and 19th October, 1871, and the quantity actually done—*i.e.*, between 1,650,000 cubic feet and 144,812 cubic feet—the said difference, 1,505,188 cubic feet, being owing to hindrances and delays on the part of the Executive Engineer, and its value Rs. 9,41,350.

IV.—For the two months, from middle of November to middle of January, 1871, when plaintiff stated the work was altogether stopped, he claimed under the same article (65) 20 per cent. of the value of 120,000 cubic feet at 60,000 cubic feet per month.

V.—He also claimed balance in account to 22nd December, 1871, Rs. 34,256-10-9.

VI.—Interest at 12 per cent. on the amount of V., from 22nd December, 1871, to 20th April, 1872.

The sums under the different heads are as follows :—

| | Rs. | a. | p. |
|---|---|---|---|
| Item I., ... ... ... | 1,80,407 | 8 | 4 |
| „ II., ... ... ... | 10,062 | 0 | 0 |
| „ III., ... ... ... | 94,135 | 0 | 0 |
| „ IV., ... ... ... | 15,009 | 10 | 11 |
| „ V., ... ... ... | 34,256 | 10 | 9 |
| „ VI., ... ... ... | 13,889 | 10 | 8 |
| Total, ... | 3,35,260 | 8 | 8 |

The general contention on behalf of Government was that no specific quantity of work had been promised the plaintiff, and that the claim was altogether exhorbitant,

and could not be supported by the terms of agreement, no breach of which had been committed by Government. With the consent of both parties the case was tried before the High Court in the exercise of its extraordinary original civil jurisdiction, the presiding Judge being the Hon'ble Justice Turner. After the trial had gone on for two days, the learned Judge expressed a decided opinion that it would be for the plaintiff's interest to settle the matter out of Court if the defendant were willing to do so.

Finally, after a private consultation between him and the counsel for each side, the plaintiff's advocate accepted Rs. 45,000 in full of all demands made by his client. This brought the case to a termination. The following note by the Government Advocate, who conducted the case for Government, will show how matters stood at the trial, and the grounds which led to this compromise being made:—

" Mr. McCarthy sued the Secretary of State for Rs. 3,35,260-8-8. This sum " may conveniently be distributed under three heads:—

I.—" Profits on work which Government contracted to give him, and did not " give him, and damages for sudden stoppage of his work, Rs. 1,90,469-8-4.

II.—" Compensation for short work from May, 1869, to October, 1871, Rs. 1,09,144-10-11.

III.—" Claims on account for work and materials, Rs. 34,256-10-9, and interest " thereon, Rs. 1,389-10-8.

I.—" The plaintiff relied on a contract which, as he claimed to interpret it, was for " 1,800,000 cubic feet of brick-work and a proportionate quantity of other work. " But it soon appeared that the contract would not bear this construction. The plaintiff " then contended that he was entitled to one-third of all the work in the New Canton- " ments, whether contemplated or not at the time of making the contract. The defend- " ant contended that there was no express contract, but only a general understanding " that Mr. McCarthy should have about one-third of the works contemplated in 1865.

" This was the view of the contract to which the Court inclined. Upon this view " it appeared that one-third of the work was of the value of Rs. 4,27,591, and that the " plaintiff had done work valued at Rs. 2,82,056. There thus remained work worth " Rs. 1,45,535, on which he was entitled to claim reasonable profits. He claimed 25 " per cent. Mr. Justice Turner seemed to think he might fairly have above 20. This " would have given him on this head somewhere about Rs. 29,000, or at 15 per cent., " Rs. 22,000.

II.—" The second head of claim arose out of Sections 61, 65, and 66 of the terms " and conditions of the contract.

" In Section 61 a minimum amount of brick-work and masonry (60,000 feet) is " provided as the minimum rate of progress.

" The plaintiff contended that this was a minimum of brick-work only, not includ- " ing stone masonry. This contention was overruled and abandoned.

" He also contended that he was entitled to receive, in addition to the 60,000 feet of " brick-work and masonry, a proportionate amount of other kinds of work, and that " this proportionate amount of other work was to be included in estimating the minimum " rate of progress in Sections 65 and 66.

" This was also overruled.

" The defendant contended that 60,000 feet was merely a measure of value; in " other words, that as long as the contractor got work of any kind worth as much as " 60,000 feet of brick-work he had all he was entitled to as a minimum.

" This was also overruled, and, on the face of the terms and conditions rightly over- " ruled, though there was reason to think that the Government officers and the contrac- " tor understood it in the sense contended for.

" The sections being taken in their natural meaning the Government might, in our " opinion, be liable to pay about Rs. 22,000 under this head. For during the months " of May, 1869, to October, 1871, the plaintiff ought to have had for 29½ months brick- " work worth Rs. 2,30,100. He did in fact get only Rs. 23,995 worth of brick-work, " leaving a deficit of Rs. 2,06,100 nearly. On this, at 10 per cent., he would get " Rs. 20,610, and for two months at 20 per cent., Rs. 1,560 extra,—total Rs. 22,170.

III.—" The claim for account on examination resolved itself into three heads :—

(1) " Profits on timber which plaintiff claimed a right to have supplied. The " timber was in substitution from iron girders, an article excepted from the " contract. This claim not being really on account was rejected.

(2) " Disputes as to rates chargeable for articles whose quality had been altered " by order of Government officers after the contract, *e.g.*, mortar.

(3) " Disputes as to the measurement of work done.

" Major Limond was of opinion that under (2) and perhaps under (3) plaintiff was " entitled to some additional payment. Its amount we could not estimate.

" Thus, upon the whole, Government might have had to pay possibly—

| | | | | |
|---|---|---|---|---|
| Head I. about | ... | ... | ... | Rs. 29,000 |
| Do. II. „ | ... | ... | ... | „ 22,000 |
| Do. III. „ | ... | ... | ... | „ 10,000 |
| | | | | Rs. 61,000 |

" And perhaps some costs. Of course some of the items might have been reduced on argu- " ment, but, upon the whole, we thought a Settlement for Rs. 45,000 was a satisfactory " one, and we considered ourselves justified in agreeing to it. Mr. Harry Marten and " Major Limond entirely concurred with me."

Zuhoor Hussein *versus* Government and others.

35. This was a suit to set aside an order of the Settlement Officer of Bijnour, admitting the farmers of five villages in Pergunnah Afzulgurh to settlement, and giving the zemindars malikanah only.

The facts as stated by the Settlement Officer are as follows:—These villages, situated in the Afzulgurh forests, form a part of the ancestral property of a branch of the Rehur Family, who in times long prior to the cession of Rohilkhund, settled at Meghpoor near Afzulgurh, and embraced the Musalman faith. The heedless improvidence and gross incapacity of this branch of the family are notorious, and Mr. Allen, in his report on the settlement of Pergunnah Rehur in 1837, speaks of them as " without exception the most indolent, ignorant, worthless men in the district, and as having been as such characterized by Mr. Lushington long ago." Not one of the numerous villages formerly owned by them is now in their hands, and, as far as extant records show, if these estates have ever been in their executive possession since the British occupation, it has only been for a very few years, the practice of farming having always been followed. At the 9th settlement also the family were excluded from engagements, and their estates were farmed to Mahomed Mohi-ud-deen Buksh Khan and others, ancestors of the present farmers—a malikanah of 5 per cent. being given to the zemindars.

In 1857 the inhabited villages of their ilaka were restored to them, but these forest villages were withheld on the ground that the whole of the lands composing them being waste, they had been farmed with a view to their clearance and cultivation. The zemindars then sued in the Court of the Moonsiff of Nageena for possession of these villages, and for mesne profits since the date when they alleged the farm to have terminated. Their claim was thrown out on the somewhat extraordinary ground that it was barred by Section 9 of Regulation IX. of 1833. On appeal it was remanded for trial on the merits, and it was then ruled by the Moonsiff that the period of farm was not 15 years as contended by the plaintiffs, but 20 years as confirmed by Government. This on

appeal was overruled by the Judge, who decided that Act VIII. of 1846, in fixing 1st July, 1866, as the period of the settlement of Bijnour, overrode all shorter terms within the district, and that the plaintiffs had no right to anything but malikanah until the close of the existing settlement. The forest villages have, in accordance with this decision, remained in the hands of the farmers till the present time, when at the new settlement the zemindars again asserted their right to have them restored.

The men who now claim, however, are with one exception not the zemindars, who were excluded at the 9th settlement, but the purchasers of the rights of those zemindars though connected by blood with them.

As regards the position of the farmers, Mr. Markham remarks :—

The farmers claim the malgoozaree on the ground that they have, as they term it, "turned dead land into living," have turned desert forests into smiling wheat fields, and state that they have incurred the expense, undergone the risk, and taken the trouble to do this, because at the 9th settlement the estates were made over to them in perpetual farm on condition that they should clear and cultivate them. Under Section 8, Regulation VII. of 1822, such a farm of waste lands would undoubtedly have been legal, and they may have been led to expect perpetuity by the Settlement Officer, but it is tolerably clear that in this case the farm was confirmed by Government for twenty years only, but was by the Judge's decision held to be conterminous with the settlement of Bijnour. Eventually, however, on grounds of expediency and equity, rather than with strict regard to the legal rights of the parties, he decided to make the settlement with the farmers. His reasons for doing so may be best gathered from his own words :—"There can be no doubt that in ordinary cases a zemindar has an indefeasible right of re-entry on the termination of a farm of this nature. But in this case, when I contemplate the character of the recorded zemindars, and their hereditary thriftless incapacity, and compare it with the well-evidenced energy and judicious liberality of the farmers, when I set the progressive improvement and present flourishing condition of these villages side by side with the ruin and desertion which I cannot but expect will be their fate if they be made over to the zemindars, I cannot have a moment's doubt as to what will be best for the country and most advantageous for the Government." And again, after noticing the great improvements they had effected, and the fact that the zemindars had never been in possession since the commencement of British rule, he goes on :—"Long prescription and a radical change for the better effected through the agency of others in what for at least 40 years has been only nominally their property entitle me to look upon these zemindars as now the owners of a lien on the estates to the extent of a percentage on the Government jumma, and of that only. Of a total area of 8,483 acres, 6,832 acres, or about 81 per cent., are still covered by forest. The recorded proprietors are incapable of doing justice to the present cultivation much less to deal satisfactorily with this waste, almost every acre of which is culturable. I think that I can still fairly treat these villages as falling under Section 8, Regulation VII. of 1822, and I accordingly continue the farm to the present farmers for the period of the incoming settlement (30 years), on condition that they extend the cultivation with reasonable rapidity. The Collector of the District will have the power to cancel the lease of farm at the close of each ten years, if, in his opinion, the cultivation has not been reasonably extended within the ten years. A malikanah of Rs. 10 per cent. on the Government jumma will be paid to the recorded proprietors in full compensation for, and in lieu and bar of all claims in and to these estates and their appurtenances during the period of the exclusion of the said proprietors." This decision was upheld in appeal by the Commissioner, whereupon the zemindars brought a suit in the Court of the Subordinate Judge to set it aside.

In forwarding a copy of the plaint, together with the proposed defence for the sanction of the Board, the Collector, Mr. Pasley, remarked that the real point at issue with Government is whether the provisions of Section 8, Regulation VII. of 1822,

apply to this case or not—that is, does that section limit the power of the Settlement Officer to grant a farm of only waste lands, or has he also the power when, as in this case the great majority of the lands composing the estate are waste to grant farm of the entire estate. He was inclined to agree with the Settlement Officer, but Mr. Forbes, who in the meantime had become Commissioner, was entirely of the opposite opinion. The Board, after carefully considering the facts, felt bound to admit that however hard it might be to the farmers to deprive them of the fruits of their exertions, yet Section 8, Regulation VII. of 1822, only applied to waste lands purely as such, and that the title of the zemindars to settlement could not in the face of the law be ignored. They therefore cancelled the order of the Settlement Officer, and directed him to settle with the zemindars. The Subordinate Judge on this understanding, as the case had already come on for trial, gave a decree in favour of the plaintiffs, but exempted Government from the payment of costs.

36. In conclusion, the Board have the melancholy task of acknowledging the valuable services of the late Mr. Jardine, who continued to discharge his duties as Government Advocate with his well known ability, and of expressing their sorrow at the sad and early termination of his brilliant career. Baboo Pearee Mohun, the Senior Government Pleader, as in former years, merits the commendation of the Board.

I have the honour to be,

SIR,

Your most obedient servant,

E. C. BUCK,

*Offg. Secretary.*

# APPENDIX I.

*Comparative Statement showing the results of litigation during* 1872-73 *and the previous four years.*

| All Divisions. | 1872-73. | | 1871-72. | | 1870-71. | | 1869-70. | | 1868-69. | |
|---|---|---|---|---|---|---|---|---|---|---|
| | Percentage of the decisions in favour of Government. | Percentage of the decisions against Government. | Percentage of the decisions in favour of Government. | Percentage of the decisions against Government. | Percentage of the decisions in favour of Government. | Percentage of the decisions against Government. | Percentage of the decisions in favour of Government. | Percentage of the decisions against Government. | Percentage of the decisions in favour of Government. | Percentage of the decisions against Government. |
| Original suits, ... ... ... | 82 | 18 | 62 | 38 | 72 | 28 | 59 | 41 | 79 | 21 |
| Appeals, Regular, ... ... ... | 90 | 10 | 69 | 31 | 62 | 38 | 65 | 35 | 44 | 56 |
| ditto, Special, ... ... ... | 85 | 15 | 80 | 20 | 100 | ... | 77 | 33 | 86 | 14 |
| Miscellaneous applications, ... ... | 77 | 23 | 87 | 13 | 80 | 20 | 56 | 44 | 56 | 44 |
| Total, ... | 83 | 17 | 71 | 29 | 73 | 27 | 60 | 40 | 65 | 35 |
| GOVERNMENT PLAINTIFF SUITS. | | | | | | | | | | |
| Original suits, ... ... ... | 86 | 14 | 67 | 33 | 91 | 9 | 80 | 20 | 84 | 16 |
| Appeals, Regular, ... ... ... | 70 | 30 | 29 | 71 | 25 | 75 | 37 | 63 | 35 | 65 |
| Ditto, Special, ... ... ... | 100 | ... | 100 | ... | ... | ... | 80 | 20 | 80 | 20 |
| Miscellaneous applications, ... ... | 82 | 18 | 92 | 8 | 95 | 5 | 80 | 20 | 93 | 7 |
| Total, ... | 83 | 17 | 79 | 21 | 85 | 15 | 74 | 26 | 77 | 23 |
| GOVERNMENT DEFENDANT SUITS. | | | | | | | | | | |
| Original suits, ... ... ... | 82 | 18 | 61 | 39 | 67 | 33 | 55 | 45 | 77 | 23 |
| Appeals, Regular, ... ... ... | 95 | 5 | 82 | 18 | 73 | 27 | 80 | 20 | 48 | 52 |
| Ditto, Special, ... ... ... | 82 | 18 | 75 | 25 | 100 | ... | 75 | 25 | 89 | 11 |
| Miscellaneous applications, ... ... | 63 | 37 | 62 | 38 | 61 | 39 | 20 | 80 | 18 | 82 |
| Total, ... | 84 | 16 | 66 | 34 | 68 | 32 | 52 | 48 | 58 | 42 |

# APPENDIX II.

*Statement showing the number of cases pending at the close of last year as well as the number instituted during the year* 1872-73.

| Description of litigation. | Government Plaintiff Suits. | | | | | | | | Government Defendant Suits. | | | | | | | | Total. | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | Pending at the close of last year. | Instituted during the year. | Total. | Decided. | | Pending. | Percentage on decided cases. | | Pending at the close of last year. | Instituted during the year. | Total. | Decided. | | Pending. | Percentage on decided cases. | | Number of cases. | Cases decided. | For Government. | Against Government. | Percentage on cases decided. | |
| | | | | For Government. | Against Government. | | For Government. | Against Government. | | | | For Government. | Against Government. | | For Government. | Against Government. | | | | | For Government. | Against Government. |
| Original suits, ... ... ... | 4 | 47 | 51 | 36 | 6 | 9 | 86 | 14 | 23 | 185 | 208 | 128 | 29 | 51 | 82 | 18 | 259 | 199 | 164 | 35 | 82 | 18 |
| Regular appeals, ... ... ... | 5 | 9 | 14 | 7 | 3 | 4 | 70 | 30 | 14 | 67 | 81 | 38 | 2 | 41 | 95 | 5 | 95 | 50 | 45 | 5 | 90 | 10 |
| Special appeals, ... ... ... | 2 | ... | 2 | 2 | ... | ... | 100 | ... | 2 | 14 | 16 | 9 | 2 | 5 | 82 | 18 | 18 | 13 | 11 | 2 | 85 | 15 |
| Miscellaneous applications, ... ... | 6 | 24 | 30 | 18 | 4 | 8 | 82 | 18 | 4 | 5 | 9 | 5 | 3 | 1 | 63 | 37 | 39 | 30 | 23 | 7 | 77 | 23 |
| Total, ... | 17 | 80 | 97 | 63 | 13 | 21 | 83 | 17 | 43 | 271 | 314 | 180 | 36 | 98 | 84 | 16 | 411 | 292 | 243 | 49 | 83 | 17 |
| Contract, ... ... ... | 1 | 17 | 18 | 12 | 1 | 5 | 92 | 8 | 2 | 6 | 8 | 4 | 2 | 2 | 66 | 34 | 26 | 19 | 16 | 3 | 84 | 16 |
| Exchequer, ... ... ... | 3 | 16 | 19 | 19 | ... | ... | 100 | ... | 3 | 12 | 15 | 10 | 2 | 3 | 84 | 16 | 34 | 31 | 29 | 2 | 93 | 7 |
| Confiscation, ... ... ... | ... | 2 | 2 | 1 | 1 | ... | 50 | 50 | 11 | 134 | 145 | 87 | 3 | 55 | 96 | 4 | 147 | 92 | 88 | 4 | 95 | 5 |
| Crown lands, ... ... ... | 2 | 1 | 3 | 2 | ... | 1 | 100 | ... | 3 | 13 | 16 | 8 | 4 | 4 | 66 | 34 | 19 | 14 | 10 | 4 | 71 | 29 |
| Escheats, ... ... ... | ... | ... | ... | ... | ... | ... | ... | ... | 3 | 1 | 4 | 4 | ... | ... | 100 | ... | 4 | 4 | 4 | ... | 100 | ... |
| To set aside orders, ... ... | 2 | ... | 2 | 1 | ... | 1 | 100 | ... | 9 | 34 | 43 | 26 | 7 | 10 | 78 | 22 | 45 | 34 | 27 | 7 | 79 | 21 |
| Trespass, ... ... ... | ... | 2 | 2 | 1 | 1 | ... | 50 | 50 | ... | 5 | 5 | 2 | ... | 3 | 100 | ... | 7 | 4 | 3 | 1 | 75 | 25 |
| Trover, ... ... ... | ... | ... | ... | ... | ... | ... | ... | ... | ... | ... | ... | ... | ... | ... | ... | ... | ... | ... | ... | ... | ... | ... |
| Pre-emption, ... ... ... | ... | 1 | 1 | 1 | ... | ... | 100 | ... | ... | 1 | 1 | 1 | ... | ... | 100 | ... | 2 | 2 | 2 | ... | 100 | ... |
| Rents and zemindaree dues, ... ... | 2 | 12 | 14 | 5 | 4 | 5 | 55 | 45 | 1 | 6 | 7 | 3 | 2 | 2 | 60 | 40 | 21 | 14 | 8 | 6 | 57 | 43 |
| Ejectment, ... ... ... | .. | 3 | 3 | 3 | ... | ... | 100 | ... | 2 | 24 | 26 | 10 | 7 | 9 | 59 | 41 | 29 | 20 | 13 | 7 | 65 | 35 |
| Mortgage, ... ... ... | 1 | 3 | 4 | 1 | 2 | 1 | 33 | 67 | 2 | 6 | 8 | 1 | 5 | 2 | 16 | 84 | 12 | 9 | 2 | 7 | 22 | 78 |
| Compensation, ... ... ... | ... | 3 | 3 | 1 | ... | 2 | 100 | ... | 2 | 23 | 25 | 16 | 3 | 6 | 84 | 16 | 28 | 20 | 17 | 3 | 85 | 15 |
| Costs, ... ... ... ... | 6 | 20 | 26 | 16 | 4 | 6 | 80 | 20 | 4 | 1 | 5 | 5 | ... | ... | 100 | ... | 31 | 25 | 21 | 4 | 84 | 16 |
| Wages, ... ... ... ... | ... | ... | ... | ... | ... | ... | ... | ... | 1 | 5 | 6 | 3 | 1 | 2 | 75 | 25 | 6 | 4 | 3 | 1 | 75 | 25 |
| Total, ... | 17 | 80 | 97 | 63 | 13 | 21 | 83 | 17 | 43 | 271 | 314 | 180 | 36 | 98 | 84 | 16 | 411 | 292 | 243 | 49 | 83 | 17 |

# APPENDIX III.

*Statement showing the number of cases decided during the year 1872-73, as well as the number and proportion of decisions in favour of and against Government during the the same period.*

| Division. | District. | Government Plaintiff. | | | | | Government Defendant. | | | | | Total. | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | | Cases decided. | For Government. | Against Government. | Percentage. For. | Percentage. Against. | Cases decided. | For Government. | Against Government. | Percentage. For. | Percentage. Against. | Cases decided. | For Government. | Against Government. | Percentage. For. | Percentage. Against. |
| Meerut. | Dehra Doon, ... | ... | ... | ... | ... | ... | ... | ... | ... | ... | ... | ... | ... | ... | ... | ... |
| | Saharunpore, ... | 1 | 1 | ... | 100 | ... | 6 | 6 | ... | 100 | ... | 7 | 7 | ... | 100 | ... |
| | Moozuffernugger, ... | ... | ... | ... | ... | ... | 5 | 5 | ... | 100 | ... | 5 | 5 | ... | 100 | ... |
| | Meerut, ... | 4 | 4 | ... | 100 | ... | 2 | 2 | ... | 100 | ... | 6 | 6 | ... | 100 | ... |
| | Boolundshuhur, . | 6 | 5 | 1 | 83 | 17 | 6 | 2 | 4 | 33 | 67 | 12 | 7 | 5 | 53 | 47 |
| | Allygurh, ... | 6 | 6 | ... | 100 | ... | 9 | 9 | ... | 100 | ... | 15 | 15 | ... | 100 | ... |
| | Total, ... | 17 | 16 | 1 | 94 | 6 | 28 | 24 | 4 | 86 | 14 | 45 | 40 | 5 | 89 | 11 |
| Kumaon. | Kumaon, ... | ... | ... | ... | ... | ... | ... | ... | ... | ... | ... | ... | ... | ... | ... | ... |
| | Gurhwal, ... | ... | ... | ... | ... | ... | ... | ... | ... | ... | ... | ... | ... | ... | ... | ... |
| | Terrai, ... | ... | ... | ... | ... | ... | 1 | 1 | ... | 100 | ... | 1 | 1 | ... | 100 | ... |
| | Total, ... | ... | ... | ... | ... | ... | 1 | 1 | ... | 100 | ... | 1 | 1 | ... | 100 | ... |
| Rohilkhund. | Bijnour, ... | 15 | 15 | ... | 100 | ... | 8 | 5 | 3 | 62 | 38 | 23 | 20 | 3 | 87 | 13 |
| | Moradabad, ... | 1 | 1 | ... | 100 | ... | 2 | ... | 2 | ... | 100 | 3 | 1 | 2 | 33 | 67 |
| | Budaon, ... | ... | ... | ... | ... | ... | 1 | 1 | ... | 100 | ... | 1 | 1 | ... | 100 | ... |
| | Bareilly, ... | 6 | 5 | 1 | 83 | 17 | 10 | 8 | 2 | 80 | 20 | 16 | 13 | 3 | 81 | 19 |
| | Shahjehanpore, ... | ... | ... | ... | ... | ... | 1 | ... | 1 | ... | 100 | 1 | ... | 1 | 1 | 100 |
| | Total, ... | 22 | 21 | 1 | 96 | 4 | 22 | 14 | 8 | 64 | 36 | 44 | 35 | 9 | 80 | 20 |
| Agra. | Muttra, ... | 1 | 1 | ... | 100 | ... | 6 | 3 | 3 | 50 | 50 | 7 | 4 | 3 | 57 | 43 |
| | Agra, ... ... | 8 | 7 | 1 | 88 | 12 | 9 | 7 | 2 | 88 | 22 | 17 | 14 | 3 | 82 | 18 |
| | Furruckabad, ... | 2 | 2 | ... | 100 | ... | 9 | 8 | 1 | 89 | 11 | 11 | 10 | 1 | 91 | 9 |
| | Mynpoory, ... | ... | ... | ... | ... | ... | ... | ... | ... | ... | ... | ... | ... | ... | ... | ... |
| | Etawah, ... | ... | ... | ... | ... | ... | 6 | 5 | 1 | 83 | 17 | 6 | 5 | 1 | 83 | 17 |
| | Etah, ... ... | ... | ... | ... | ... | ... | ... | ... | ... | ... | .. | ... | ... | ... | ... | ... |
| | Total, ... | 11 | 10 | 1 | 91 | 9 | 30 | 23 | 7 | 77 | 23 | 41 | 33 | 8 | 80 | 20 |
| Allahabad. | Cawnpore, ... | ... | ... | ... | ... | ... | ... | ... | ... | ... | ... | ... | ... | ... | ... | ... |
| | Futtehpore, ... | ... | ... | ... | ... | ... | 3 | 1 | 2 | 33 | 67 | 3 | 1 | 2 | 33 | 67 |
| | Banda, ... | ... | ... | ... | ... | ... | ... | ... | ... | ... | ... | ... | ... | ... | ... | ... |
| | Humeerpore, ... | ... | ... | ... | ... | ... | ... | ... | ... | ... | ... | ... | ... | ... | ... | ... |
| | Allahabad, ... | 5 | 2 | 3 | 40 | 60 | 105 | 96 | 9 | 91 | 9 | 110 | 98 | 12 | 89 | 11 |
| | Jounpore, ... | ... | ... | ... | ... | ... | 4 | 4 | ... | 100 | ... | 4 | 4 | ... | 100 | ... |
| | Total, ... | 5 | 2 | 3 | 40 | 60 | 112 | 101 | 11 | 89 | 11 | 117 | 103 | 14 | 88 | 12 |
| Jhansie. | Jaloun, ... | 1 | 1 | ... | 100 | ... | ... | ... | ... | ... | .. | 1 | 1 | ... | 100 | ... |
| | Jhansie, ... | ... | ... | ... | ... | ... | ... | ... | ... | ... | .. | ... | ... | ... | ... | ... |
| | Lullutpore, ... | ... | ... | ... | ... | ... | ... | ... | ... | ... | ... | ... | ... | ... | ... | ... |
| | Total, ... | 1 | 1 | ... | 100 | ... | ... | ... | ... | ... | ... | 1 | 1 | ... | 100 | ... |
| Benares. | Goruckpore, ... | 2 | 2 | ... | 100 | ... | 3 | 2 | 1 | 67 | 33 | 5 | 4 | 1 | 80 | 20 |
| | Bustee, ... | ... | ... | ... | ... | ... | 2 | 2 | ... | 100 | ... | 2 | 2 | ... | 100 | ... |
| | Azimgurh, ... | ... | ... | ... | ... | ... | 1 | 1 | ... | 100 | ... | 1 | 1 | ... | 100 | ... |
| | Benares, ... | 9 | 5 | 4 | 56 | 44 | 5 | 2 | 3 | 40 | 60 | 14 | 7 | 7 | 50 | 50 |
| | Ghazeepore, ... | 1 | 1 | ... | 100 | ... | 8 | 7 | 1 | 78 | 12 | 9 | 8 | 1 | 89 | 11 |
| | Mirzapore, ... | 8 | 5 | 3 | 62 | 38 | 4 | 3 | 1 | 75 | 25 | 12 | 8 | 4 | 66 | 34 |
| | Total, ... | 20 | 13 | 7 | 65 | 35 | 23 | 17 | 6 | 74 | 26 | 43 | 30 | 13 | 69 | 31 |
| | Grand Total, ... | 76 | 63 | 13 | 83 | 17 | 216 | 180 | 36 | 84 | 16 | 292 | 243 | 49 | 83 | 17 |

# APPENDIX IV.

*Statement showing the different descriptions of suits under trial during the year* 1872-73.

| Division. | District. | Contract. | Exchequer. | Confiscation. | Crown lands. | Escheats. | To set aside orders. | Trespass. | Trover. | Pre-emption. | Rents and zemindaree dues. | Ejectment. | Mortgage. | Compensation. | Costs. | Wages. | Total. |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| MEERUT. | Dehra Doon, ... | ... | ... | ... | ... | ... | ... | ... | ... | ... | ... | ... | ... | ... | ... | ... | ... |
| | Saharunpore, ... | 2 | ... | ... | ... | ... | 3 | ... | ... | ... | ... | 3 | ... | 1 | ... | ... | 9 |
| | Moozuffernuggur, | ... | ... | ... | ... | ... | 1 | ... | ... | 1 | ... | ... | ... | 3 | ... | ... | 5 |
| | Meerut, ... | 3 | ... | 1 | 1 | ... | ... | ... | ... | ... | ... | ... | ... | ... | 2 | ... | 7 |
| | Boolundshuhur, ... | ... | 4 | 3 | ... | ... | ... | ... | ... | ... | 3 | 2 | ... | 1 | 1 | ... | 14 |
| | Allygurh, ... | 1 | ... | ... | 2 | ... | 2 | ... | ... | ... | 1 | 1 | ... | 4 | 6 | 1 | 18 |
| | Total, ... | 6 | 4 | 4 | 3 | ... | 6 | ... | ... | 1 | 4 | 6 | ... | 9 | 9 | 1 | 53 |
| KUMAON. | Kumaon, ... | ... | ... | ... | ... | ... | ... | ... | ... | ... | ... | ... | ... | ... | ... | ... | ... |
| | Terrai, ... | .. | ... | ... | ... | ... | ... | ... | ... | ... | ... | ... | ... | 2 | ... | ... | 2 |
| | Gurhwal, ... | ... | ... | ... | ... | ... | ... | ... | ... | ... | ... | ... | ... | ... | ... | ... | ... |
| | Total, ... | ... | ... | ... | ... | ... | ... | ... | ... | ... | ... | ... | ... | 2 | ... | ... | 2 |
| ROHILKHUND. | Bijnour. ... | 1 | 15 | 1 | ... | ... | 3 | ... | ... | ... | ... | 7 | 1 | 2 | ... | ... | 30 |
| | Moradabad, ... | ... | ... | ... | 2 | ... | 3 | ... | ... | ... | ... | ... | ... | ... | ... | ... | 5 |
| | Budaon, ... | ... | ... | ... | ... | ... | 1 | ... | ... | ... | ... | ... | ... | ... | ... | ... | 1 |
| | Bareilly, ... | 1 | 5 | 3 | ... | ... | 3 | 3 | ... | ... | ... | 1 | ... | 4 | ... | ... | 20 |
| | Shahjehanpore, ... | ... | 1 | ... | ... | ... | ... | ... | ... | ... | ... | ... | 1 | ... | ... | ... | 2 |
| | Total, ... | 2 | 21 | 4 | 2 | ... | 10 | 3 | ... | ... | ... | 8 | 2 | 6 | ... | ... | 58 |
| AGRA. | Muttra, ... | 1 | 1 | ... | 3 | ... | 3 | ... | ... | ... | ... | ... | ... | ... | ... | ... | 8 |
| | Agra, ... | 8 | ... | ... | 4 | 1 | ... | ... | ... | 1 | ... | 4 | 1 | ... | ... | ... | 19 |
| | Furruckabad, ... | 2 | 1 | 1 | 3 | 2 | 1 | ... | ... | ... | ... | ... | ... | ... | 1 | ... | 11 |
| | Mynpoory, ... | ... | ... | ... | ... | ... | ... | ... | ... | ... | ... | ... | ... | ... | ... | ... | ... |
| | Etawah, ... | ... | 2 | ... | 1 | ... | 3 | ... | ... | ... | ... | 1 | ... | 1 | ... | ... | 8 |
| | Etah, ... | ... | ... | ... | ... | ... | ... | ... | ... | ... | ... | ... | ... | ... | ... | ... | ... |
| | Total, ... | 11 | 4 | 1 | 11 | 3 | 7 | ... | ... | 1 | ... | 5 | 1 | 1 | 1 | ... | 46 |
| ALLAHABAD. | Cawnpore, ... | ... | ... | ... | ... | ... | ... | ... | ... | ... | ... | ... | ... | ... | ... | ... | ... |
| | Futtehpore, ... | 1 | 1 | 1 | ... | ... | ... | ... | ... | ... | ... | ... | ... | ... | ... | ... | 3 |
| | Banda, . | ... | .. | ... | ... | ... | ... | ... | ... | ... | ... | ... | ... | ... | ... | ... | ... |
| | Humeerpore, ... | ... | ... | ... | ... | ... | ... | ... | ... | ... | ... | ... | ... | ... | ... | ... | ... |
| | Allahabad, ... | 1 | 1 | 136 | 2 | ... | 5 | ... | ... | ... | 9 | 5 | 5 | 7 | 1 | 1 | 173 |
| | Jounpore, ... | .. | ... | ... | .. | ... | 4 | ... | ... | ... | ... | ... | ... | ... | ... | ... | 4 |
| | Total, ... | 2 | 2 | 137 | 2 | ... | 9 | ... | ... | ... | 9 | 5 | 5 | 7 | 1 | 1 | 180 |
| JHANSIE. | Jaloun, ... | 1 | ... | ... | ... | ... | ... | ... | ... | ... | ... | ... | ... | ... | ... | ... | 1 |
| | Jhansie, ... | ... | ... | ... | ... | ... | ... | ... | ... | ... | ... | ... | ... | ... | ... | ... | ... |
| | Lullutpore, ... | ... | ... | ... | ... | ... | ... | ... | ... | ... | ... | ... | ... | ... | ... | ... | ... |
| | Total, ... | 1 | ... | ... | ... | ... | ... | ... | ... | ... | ... | ... | ... | ... | ... | ... | 1 |
| BENARES. | Goruckpore, ... | 2 | ... | ... | ... | ... | ... | ... | ... | ... | ... | 1 | ... | ... | 6 | ... | 9 |
| | Bustee, ... | ... | ... | 1 | ... | ... | ... | ... | ... | ... | ... | ... | ... | ... | 1 | ... | 2 |
| | Azimgurh, ... | 1 | ... | ... | ... | ... | ... | ... | ... | ... | ... | ... | ... | ... | ... | ... | 1 |
| | Benares, ... | ... | .. | ... | ... | ... | 4 | 4 | ... | ... | ... | 3 | ... | 2 | 11 | ... | 24 |
| | Ghazeepore, ... | ... | 2 | ... | ... | ... | 6 | .. | ... | ... | ... | ... | ... | ... | 1 | 4 | 13 |
| | Mirzapore, ... | 1 | 1 | ... | 1 | 1 | 3 | ... | ... | ... | 8 | 1 | 4 | 1 | 1 | ... | 22 |
| | Total, ... | 4 | 3 | 1 | 1 | 1 | 13 | 4 | ... | ... | 8 | 5 | 4 | 3 | 20 | 4 | 71 |
| | Grand Total, ... | 26 | 34 | 147 | 19 | 4 | 45 | 7 | ... | 2 | 21 | 29 | 12 | 28 | 31 | 6 | 411 |

# APPENDIX VI.

*Comparative Statement showing the cost of litigation during* 1871-72 *and* 1872-73.

| Division. | Year. | Cost incurred by Government. | Awarded | | Recovered. | Remitted. | Balance. | Cost claimed by Government for past years. | Amount recovered during the year. | Amount remitted. |
|---|---|---|---|---|---|---|---|---|---|---|
| | | | For Government. | Against Government. | | | | | | |
| 1. | 2. | 3. | 4. | 5. | 6. | 7. | 8. | 9. | 10. | 11. |
| | | Rs. a. p. | Rs. a. p. | Rs. a. p. | Rs. a. p. | | Rs. a. p. | Rs. a. p. | Rs. a. p. | Rs. a. p. |
| Meerut, ... | 1871-2, ... ... | 3,711 4 7 | 2,928 9 10 | 951 14 0 | 721 6 1 | ... | 2,207 3 9 | 1,887 8 3 | 971 13 3 | ... |
| | 1872-3, ... ... | 5,506 9 9 | 2,986 3 3 | 1,240 7 4 | 83 12 9 | ... | 2,902 6 6 | 3,122 14 9 | 385 11 6 | 784 7 3 |
| Kumaon, ... | 1871-2, ... ... | ... | ... | ... | ... | ... | ... | 4 0 0 | 4 0 0 | ... |
| | 1872-3, ... ... | 550 0 0 | 88 7 0 | ... | 88 7 0 | ... | ... | ... | ... | ... |
| Rohilkhund, ... | 1871-2, ... ... | 2,988 14 10 | 2,363 7 10 | 655 0 0 | 1,752 11 10 | ... | 610 12 0 | 5,590 15 11 | 1,269 4 5 | 567 9 0 |
| | 1872-3, ... ... | 1,018 8 3 | 738 9 9 | 154 5 6 | 190 13 3 | ... | 547 12 6 | 4,364 14 6 | 1,652 10 0 | ... |
| Agra, ... | 1871-2, ... ... | 1,781 0 7 | 443 7 9 | 774 15 3 | 94 7 11 | ... | 348 15 10 | 1,598 13 5 | 9 2 0 | 6 3 1 |
| | 1872-3, ... ... | 3,525 7 11 | 2,576 2 8 | 705 13 2 | 127 9 6 | ... | 2,448 9 2 | 1,932 8 2 | 138 5 0 | ... |
| Jhansie, ... | 1871-2, ... ... | 73 7 0 | 73 7 0 | ... | ... | ... | 73 7 0 | 15 0 0 | 15 0 0 | ... |
| | 1872-3, ... ... | 41 8 0 | 41 8 0 | ... | ... | ... | 41 8 0 | 73 7 0 | 73 7 0 | ... |
| Allahabad, ... | 1871-2, ... ... | 1,194 8 3 | 728 0 3 | 4,130 2 11 | 37 15 0 | ... | 690 1 3 | 1,520 7 9 | 676 12 2 | 11 5 6 |
| | 1872-3, ... ... | 4,879 0 6 | 3,096 12 5 | 1,358 8 0 | 493 14 6 | ... | 2,602 13 11 | 1,522 7 4 | 15 2 9 | 355 13 4 |
| Benares, ... | 1871-2, ... ... | 1,316 15 9 | 2,489 4 9 | 1 13 0 | 630 14 0 | ... | 1,858 6 9 | 2,214 0 0 | 662 5 8 | ... |
| | 1872-3, ... ... | 2,506 9 6 | 1,562 3 11 | 1,655 1 0 | 1,262 8 5 | ... | 299 11 6 | 3,410 1 1 | 1,380 15 9 | 869 0 9 |
| Total, ... | 1871-2, ... .. | 11,066 3 0 | 9,026 5 5 | 6,513 13 2 | 3,237 6 10 | ... | 5,788 14 7 | 12,830 13 4 | 3,608 5 6 | 585 1 7 |
| | 1872-3, ... ... | 18,027 11 11 | 11,089 15 0 | 5,114 3 0 | 2,247 1 5 | ... | 8,842 13 7 | 14,426 4 10 | 3,646 4 0 | 2,009 5 4 |

NOTE.—The figures for 1871-72 supersede those exhibited in last years report.

# ORDERS OF GOVERNMENT.

No. 18A. of 1874.

From

The SECRETARY to GOVERNMENT,

North Western Provinces,

To

The OFFG. SECY. to the BOARD of REVENUE,

North-Western Provinces.

Dated Camp Kulyanpore, the 19th January, 1874.

Sir,

Judicial Department (Civil.)

The Legal Remembrancers' Report for the year 1872-73, submitted with your letter No. 1024A., dated 16th September, 1873, has been laid before the Lieutenant-Governor, and I am now directed to communicate the following orders thereon.

2. The report was not received till the 27th October, even later than last year. I am to call the attention of the Board to the repeated request of Government for its more punctual submission, and to express the Lieutenant-Governor's hope that there may be no occasion in future again to animadvert on this point.

3. The total number of suits in which Government was concerned rose from 232 to 411, a much higher number than in any previous year. The increase however is exceptional, being due to the large number of suits brought to contest orders of confiscation passed in 1857-58, a class of suits which it may be hoped will now really come to an end. The Lieutenant-Governor is glad to observe that the number of cases in which Government took the initiative has but slightly increased, and that the results both for these and for defended cases are such as fully to justify the action taken by its Officers.

4. Of the 411 suits 60 were pending from 1871-72, and 351 instituted during the year. Of these 243 were decided in favor of, and 49 against, Government, leaving 119 still pending, which is an unusually large number.

5. The greatest success was attained by Government in regular appeals, of which no less than 90 per cent were given in its favor, as were 85 per cent of the special appeals, 82 per cent of the original suits, and 77 per cent of the miscellaneous applications. Except the last, where there is a slight falling off, a decided improvement is shewn in each class. Government was successful in 83 per cent of the cases in which it was plaintiff, and in 84 per cent of those in which it was defendant. These results are highly gratifying, as they afford not only a presumption of discretion and judgment in the litigation of the Officers of Go-

vernment, but also an indirect proof of the general rectitude of the administration, the action of which is liable at any point to be contested in the Courts.

6. *Paras.* 18 *to* 20.—Turning to the four-fold classification, adopted to shew whether the interests involved were those of the Government itself, or of the Municipalities, Local Funds, and Minors' Estates, of which it is guardian and supervisor, the greater part of the litigation concerned the action of the administration on its own behalf, the number of suits under this head being swollen by the claims to confiscated lands before mentioned. Suits in which the Court of Wards was concerned have risen from 37 to 70, and Municipal suits from 17 to 24, while Local Funds shew a decrease from 30 to 21. The results were (as already noticed) most satisfactory. Government in its own behalf was most successful, gaining no less than 86 per cent of its cases. The Court of Wards, which stood first last year, is again good, having 78 per cent decided in its favor, while Municipalities have raised their percentage of success from 44 per cent to 63 per cent, and Local Funds from 47 per cent to 75 per cent. His Honor views this improvement with satisfaction.

7. *Paras.* 21 *to* 23.—The Benares Division, which stood first in the order of merit for the last two years, is now last, the percentage of successful cases having fallen from 95 per cent. to 69 per cent. This is stated to be in some degree owing to the number of cases lost by the Court of Wards in the Benares and Mirzapore Districts. (It is presumed the former of these was written by mistake perhaps for Ghazeepore). Meerut and Allahabad have both done remarkably well, winning 89 and 88 per cent. of their cases respectively, while Agra and Rohilkhund are also good with 80 per cent. each decided in their favor.

8. *Paras.* 24 *to* 26.—The cost of litigation to Government during the year was Rs. 18,027, as compared with Rs. 11,066, in 1871-72, though it was relatively cheaper on account of the large increase in the number of suits. Of this amount Rs. 11,090, or 61 per cent., was awarded in favor of Government, adding to which the balance due from the previous year, or Rs. 14,426, the total demand on the part of Government was Rs. 25,516. This was dealt with thus :—

| | | | | |
|---|---|---|---|---|
| Recovered, due from past year, | ... | ... | Rs. | 3,646 |
| „ current year, | ... | ... | „ | 2,247 |
| Remitted as irrecoverable, | ... | ... | „ | 2,009 |
| | | Total, | Rs. | 7,902 |
| Balance outstanding, | ... | ... | „ | 17,614 |

Thus the balance due instead of diminishing has increased, and His Honor is disappointed to find that the Board and Commissioners have not taken more notice of the repeated injunctions of Government with regard to the speedy collection or remission of these sums. Except Benares, the figures for all the Divisions are most unsatisfactory, and imply a want of attention to the wishes of Government, which the Lieutenant-Governor did not expect to find.

10. I am again to request that the Board will enjoin a careful observation of former orders on this point, and insist on their being rigidly adhered to by the officers whose duty it is to recover costs. Every effort should be made to realize them at once, and when there is no prospect of doing this, the sanction of the Board should be obtained to writing them off as irrecoverable. His Honor approves of the proposal to distinguish between the recoverable, doubtful, and irrecoverable balances in future.

11. The statement which the Board promise to draw up for future years, shewing the value of the property litigated, will be useful.

12. The notes on the selected cases are full, but nothing appears to call for special notice from Government. The attention of the Public Works Department will be drawn to the suit of Gholam Ali and Akbar Ali of Benares, *versus* Soobhan Ali and Government (para. 31.)

13. The Lieutenant Governor concurs with the Board in lamenting the death of the Government Advocate, Mr. Jardine, whose merits have been on another occasion eulogized by Government. Baboo Pearee Mohun, the Senior Government Pleader, also deserves commendation.

14. In conclusion I am to congratulate the Board on the very successful results (excepting the realization of outstanding costs) which have attended their administration of the office of Legal Remembrancers during the past year, and the judgment and ability they have shewn in guarding the interests of Government.

I have the honor to be,

SIR,

Your most obedient Servant,

C. A. ELLIOTT,

*Secretary to Government,*

*North-Western Provinces.*

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No. 19A.

COPY, with extract para. 31 of the Report, forwarded to the Secretary to this Government, in the Public Works Department, for information, with reference to para. 12 of the Review.